

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEREK TATE,
Plaintiff,

v.

A. LOMELI, *et al.*,
Defendants.

Case No. 2:22-cv-01012-JDP (PC)

ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS

ECF No. 2

SCREENING ORDER THAT PLAINTIFF:

(1) FILE AN AMENDED
COMPLAINT; OR

(2) STAND BY HIS COMPLAINT
SUBJECT TO A
RECOMMENDATION THAT IT BE
DISMISSED

ECF No. 1

THIRTY-DAY DEADLINE

FINDINGS AND RECOMMENDATIONS
THAT PLAINTIFF'S MOTION FOR
INJUNCTIVE RELIEF BE DENIED

ECF No. 3

OBJECTIONS DUE WITH FOURTEEN
DAYS

1 Plaintiff Derek Tate is a state inmate proceeding without counsel in this civil rights action
 2 brought under 42 U.S.C. § 1983. His complaint identifies two defendants, Lomeli and Holems,
 3 but contains no allegations. Instead, plaintiff merely asks the court to consider several exhibits
 4 attached to the complaint. It is not apparent from reviewing the exhibits how defendants
 5 allegedly violated plaintiff's rights. I will give plaintiff an opportunity to file an amended
 6 complaint that sets forth his allegations. I will also grant his application to proceed *in forma*
 7 *pauperis*, ECF No. 2, and will recommend that his motion for preliminary injunctive relief, ECF
 8 No. 3, be denied.

9 Screening and Pleading Requirements

10 A federal court must screen a prisoner's complaint that seeks relief against a governmental
 11 entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable
 12 claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a
 13 claim upon which relief may be granted, or seeks monetary relief from a defendant who is
 14 immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

15 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
 16 Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its
 17 face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
 18 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
 19 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere
 20 possibility of misconduct," the complaint states no claim. *Id.* at 679. The complaint need not
 21 identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024,
 22 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that
 23 give rise to an enforceable right to relief." *Nagrapa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
 24 n.2 (9th Cir. 2006) (en banc) (citations omitted).

25 The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404
 26 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it
 27 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
 28 would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).

1 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements
 2 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
 3 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

4 **Analysis**

5 Plaintiff brings this action against defendants Lomeli and Holems, alleging that they
 6 violated his “expectation of safety.” ECF No. 1 at 1, 3. The complaint, however, contains no
 7 allegations and instead references several exhibits attached to the complaint. *See* ECF No. 1. It is
 8 not apparent from the exhibits, which relate to plaintiff’s housing classification and transfer to a
 9 different prison, how defendants violated his rights. The documents make no mention of Holems
 10 and merely indicate that Lomeli was a correctional counselor involved in the decision to transfer
 11 plaintiff to a new facility. As drafted, I cannot discern the specific claims plaintiff is attempting
 12 to allege or the factual basis for any such claims.

13 I will allow plaintiff a chance to amend his complaint before recommending that this
 14 action be dismissed. If plaintiff decides to file an amended complaint, the amended complaint
 15 will supersede the current complaint. *See Lacey v. Maricopa Cnty.*, 693 F. 3d 896, 907 n.1 (9th
 16 Cir. 2012) (en banc). This means that the amended complaint will need to be complete on its face
 17 without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended
 18 complaint is filed, the current complaint no longer serves any function. Therefore, in an amended
 19 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each
 20 defendant’s involvement in sufficient detail. The amended complaint should be titled “First
 21 Amended Complaint” and refer to the appropriate case number. If plaintiff does not file an
 22 amended complaint, I will recommend that this action be dismissed.

23 Plaintiff has also filed a motion for preliminary injunctive relief that seeks to prevent his
 24 transfer to California State Prison-Sacramento. ECF No. 3. “A plaintiff seeking a preliminary
 25 injunction must establish that he is likely to succeed on the merits, that he is likely to suffer
 26 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,
 27 and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).
 28

1 Given that plaintiff's current complaint is deficient, he cannot show that he is likely succeed on
2 the merits. I recommend that his motion for preliminary injunction be denied without prejudice.

3 Accordingly, it is ORDERED that:

4 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 2, is granted.

5 2. Within thirty days from the service of this order, plaintiff must either file an amended
6 complaint or advise the court he wishes stand by his current complaint. If he selects the latter
7 option, I will recommend that this action be dismissed.

8 3. Failure to comply with this order may result in the dismissal of this action.

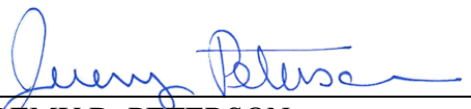
9 4. The clerk's office is directed to send plaintiff a complaint form and assign a district
10 judge to this action.

11 Further, it is RECOMMENDED that plaintiff's motion for injunctive relief, ECF No. 3,
12 be denied.

13 I submit these findings and recommendations to the district judge under 28 U.S.C.
14 § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,
15 Eastern District of California. The parties may, within 14 days of the service of the findings and
16 recommendations, file written objections to the findings and recommendations with the court.
17 Such objections should be captioned "Objections to Magistrate Judge's Findings and
18 Recommendations." The district judge will review the findings and recommendations under 28
19 U.S.C. § 636(b)(1)(C).

20
21 IT IS SO ORDERED.

22 Dated: June 30, 2022

23 
24 JEREMY D. PETERSON
25 UNITED STATES MAGISTRATE JUDGE
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